

Academic Roles, Political Freedoms, and Practical Abilities

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In a recent [Guest Editorial](#) of the International Journal of Constitutional Law, which was published alongside two short comments in letters to the editors written by Jan Komárek and by myself, Tarunabh Khaitan presented an interesting argument about academic activism and the role obligations of constitutional scholars.

In a previous article in the [European Constitutional Law Review](#), Komárek had presented a general argument for skepticism against formal participation in politics by academics interested in constitutional law and against a scholar's engagement in public advocacy for certain values, rights, and principles of justice. Komárek believes that academic freedom is not a special right that provides an additional protection to a scholar's ordinary freedom of speech, but rather a *more limited* freedom that comes with a special responsibility that is inconsistent with an engagement in other roles like the role of a political activist. To retain their scientific authority, constitutional scholars should stay away from contested political battles and pursue knowledge only for its own sake.

As I read it, Khaitan's Editorial is a response to Komárek's position. Khaitan does not believe academics concerned with justice should refrain from defending their views in public and acting to satisfy the demands of justice in which they genuinely believe. If, for instance, you regard equality as a political value, there is nothing wrong if you choose the topic of your research with a hope to enhance that value and if after your research is concluded you advocate for a certain egalitarian policy on the basis of the conclusions of your research. Nevertheless, Khaitan argues that there is still an important constraint in an academic's claim to engage in politics and in milder forms of academic activism, for there are (in his view) instrumental reasons to avoid undertaking research that is *motivated* by the pursuit of a particular political goal. Even if you are committed "to always prioritizing the twin objectives of truth-telling and knowledge-dissemination if they come into conflict with [your] activist goals", [Khaitan](#) believes that there are strong instrumental reasons to avoid undertaking research that is motivated to achieve a specific political aim:

"Typically, activism (i) has shorter time and space horizons, (ii) demands an attitude of certainty, and (iii) celebrates and rewards those who bring about just outcomes. These features are in tension with the academy's need to provide time and distance for research and reflection, inculcate an attitude of scepticism, and reward truth-seekers and knowledge-creators".

I believe both Komárek and Khaitan are wrong. There is no general reason to suppose that constitutional law scholars should refrain from engaging in politics, and I think that a scholar's motivation to achieve a certain political goal does not affect the value, quality, or credibility of the conclusions of her inquiry. Moreover, the

austere research ethics underlying the arguments of Komárek and Khaitan imposes on constitutional law scholars a set of role obligations that are in tension with some dispositions and epistemic attitudes that are often necessary to be a competent scholar in value-laden disciplines like political philosophy and constitutional law.

Khaitan's piece was published on the same day that I delivered the *Serras de Minas Association for Legal Theory and Theory of Justice's* Annual Lecture, in Brazil, in which I discussed Komárek's and Khaitan's views. I will briefly summarize some of my arguments here.

Reasons, Political Judgments, and Constitutional Law

Komárek has an implausible conception of role-obligations. As [Gerald Postema](#) pointed out in his writings on lawyers' professional ethics, it is a common mistake in moral philosophy to suppose that there are only two possible approaches to role obligations: *either* a reductive approach, which assumes that role-related ethical norms simply replace our ordinary morality, *or* a skeptical approach to professional ethics that does not distinguish between "professional responsibilities" and a "private morality", because it assumes that "the duties and responsibilities of a professional are no different from those of any lay person facing a similar moral problem". I believe that these alternatives are equally wrong, since they presuppose, as Postema aptly showed, that "practical deliberation, judgment, and action within the role are effectively cut off from ordinary morality, beliefs, attitudes, feelings, and relationships – resources on which responsible judgment and action depend". We should strive, therefore, for an account of role-ethics that is capable to *integrate* our ordinary morality into our role, instead of assuming that they come apart.

When we turn our attention to the practice of interpreting legal and political values like democracy, rule of law, equality, freedom, and other fundamental legal values, we can see that these concepts are contested not only because they are vague, but also because they are "thick ethical concepts", the content of which one cannot understand without making a practical value-judgment. To grasp the content of these concepts, I argued, we must develop a set of practical abilities that enable us to *respond appropriately* to certain reasons. As [Joseph Raz](#) argued in his neoclassical conception of agency, our capacity to act rationally depends in part on our "ability to perceive reasons and respond to them". To grasp the content of legal concepts like the concept of the rule of law, we must develop certain dispositions and practical skills that empower us to respond to certain failures to act in accordance with these reasons.

The point is not merely that it is impossible to be neutral while explaining value-laden concepts, but also that we act wrongly if we *strive* to be neutral or indifferent to a failure to pursue these values. We should not curb our inclinations to act in response to injustice, because if we struggle to do it, we may impair our ability to understand the demands of justice (and other concepts constitutively related to it) in the appropriate way. Suppose, for instance, that you are an academic in a state

where a government is persistently acting to sabotage the rule of law and undermine the community's fidelity to this principle. If you think that scholars should not care about justice, like [Komárek](#) suggested in response to Khaitan, you will probably be a bad academic because you will fail to respond to reasons in the appropriate way. You will not only be a bad citizen if you fail to resist to an attack on the most important values of your political community, but also a bad academic, because you will fail to *grasp* how that value applies and what it requires in the current case.

On the Possibility of Normative Conflicts

I am not supposing, of course, that one's engagement in political activism will never come into conflict with one's role-obligations as an academic. Perhaps, in a given case, the norms that define one's obligation as an academic can come into conflict with one's advocacy for certain causes, however respectable they might be. Nonetheless, as I pointed out in [previous work](#) (and as Dworkin has argued several times when he was faced with the issue of incommensurability in ethics), we cannot assume a priori, before struggling to make sense of our obligations and interpreting them in an integrative way, that the norms of different normative systems will always collide. To conclude that there is a conflict between the role-obligations of political activists and academics in a certain case, one must consider each apparent conflict, looking at concrete aspects therein, instead of assuming an incompatibility by default. Most of the times, there is simply *no conflict* between these two activities, if the agent is responsible enough to take seriously the role obligations involved in the practices in which she engages.

Science and Motivation

We can now turn to the problem of Khaitan's view. Despite Komárek's failure to develop a sound account of the role obligations of academics, he was able to notice a tension in Khaitan's reasoning. Khaitan seems to commit to two strategies that are impossible to be pursued by a single rational agent. He thinks an academic can be a political activist when she chooses what topic to work on, and then again after she published her research. But she immediately ceases to be an activist when she performs her academic duties and takes up the task of making scientific inquiries, assessing evidence, making rational judgments about assertions and the content of legal concepts, and so on. But can the academic really change her character in that way? Can she cease to be "politically motivated", to transform herself into an apolitical scientist, and then again into an activist after her job is done? I think that the answer is "no", and that Komárek is right that one cannot fragment one's character and personality in that way.

Nonetheless, Komárek is wrong to assume that because a person holds a strong commitment to certain political ideas, she is unfit to be a good academic. As Carolina Cyrillo, a Brazilian scholar with expertise in the topic of academic freedom, commented in response to my analysis of Komárek and Khaitan, the situation of the politically engaged scholar is similar to that of the academic who practices a given religion. Can religious people be good academics? Of course, they can, because the

conflicts between their religious views and their role obligations as academics will almost always be contingent and local, without the potential to impair their judgments and to prevent them from achieving reasonable interpretations.

I believe we all agree that *sometimes* one's religious beliefs might come into conflict with one's inquiry as an academic, and that a religious academic should watch herself. Nonetheless, the right way to evaluate whether the religious or the political activist failed to perform her academic job is not to inquire into her motives or her personal beliefs. The task of making assertions and defending claims in a rational discourse is, like [Robert Brandom](#) has showed in his insightful analysis of linguistic and rational practices, a *practical* task. We evaluate an assertion as good or reliable not because of the motives and mental states of the utterer, but by considering the utterer's capacity to comply with the rational norms that define the appropriateness of her assertions and allow participants in social practices to make objective assessments of the correctness or incorrectness of a given claim. This is why I argued, in [my response to Khaitan](#), that "an inquiry into a scholar's motives is an illegitimate criterion to evaluate an academic work".

Conclusion

I conclude, therefore, with a confession. Although the bulk of my own academic work is in legal theory and political philosophy, in recent years I have taken up serious controversies in constitutional law. Since Dilma Rousseff's wicked impeachment trial in Brazil and the election of Bolsonaro, part of my own work is dedicated to examining concrete issues in constitutional law. All of it, I acknowledge, is politically motivated. To be honest, I believe I am morally obligated to engage in politics to defend the rule of law and democracy in Brazil and elsewhere. I think that scholars like Jan Komárek are not apolitical and that in the current context they take sides in political battles, just like I do. While I am on the side of scholars like Wojciech Sadurski, Komárek, whether he likes it or not, or whether he is aware of it or not, is on the side of authoritarians like Trump, Orbán, Kaczyński, and Bolsonaro.

So let me finish this by making a challenge to the reader: If you don't like what I write, then rebut my arguments and show where I went wrong, instead of questioning my motives. This is what science is about, and what legal scholars who take seriously the ethical commitments of their job should do.

